



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Bert Ford, Administrator  
Texas Liquor Control Board  
Austin, Texas

Dear Sir:

Opinion No. C-6084

Re: In prosecuting a defendant who has been charged with the unlawful sale of liquor, which local option election should be taken under consideration?

And related questions.

We have your request for our opinion, from which we quote as follows:

"A certain county in Texas has over a period of years held a series of elections in which prohibition was originally established, subsequently the sale of beer was legalized and thereafter an election to legalize the sale of all alcoholic beverages failed to carry.

- "1. If a defendant in that county has been charged with the unlawful sale of liquor, would it be sufficient proof to allege and establish the fact that the most recent election held in the county failed to legalize the sale of beer, and that by reason of such election the sale of liquor was prohibited in the said county?
- "2. Is it necessary to allege and prove the original election or the most recent election in which absolute prohibition was established, and to chronologically present the results of subsequent elections in which the sale of beer only had been legalized, and that legalizing the sale of all alcoholic beverages had failed in a vote upon the issue submitted to the people?

- "3. Would there be sufficient evidence to prove that the sale of liquor is unlawful in a showing that at a given time an election had been successfully carried to prohibit the sale of all alcoholic beverages, and that subsequently no election had been held in this county having the effect of legalizing the sale of liquor?"

While we have not found any appellate court decision in point upon the questions propounded, we have given careful consideration to the same, and we have reached the following conclusions:

In answer to your first question, you are advised that in our opinion the allegations and proof should show the most recent election in which the traffic in alcoholic beverages had been positively prohibited. In other words, if in the county in question, for example, an election had been held on January 1, 1938 prohibiting absolutely all alcoholic beverages, including beer of less than four per cent (4%), and then on January 1, 1939 another election was held in an effort to legalize such beer, but which proposition failed to carry, your complaint and information should allege the election of January 1, 1938, and need make no reference to the election of 1939, irrespective of what type of alcoholic beverage is involved in the pending case. Since the original election of 1938 positively prohibited all liquors, the election of 1939 wherein those favoring legalization lost the election would have no bearing upon the matter.

Your second question presents some difficulty until it is thoroughly understood. As we understand you, you desire to know the result in the following sort of hypothetical situation: Election held on January 1, 1938 positively prohibited all liquors. Election on January 1, 1939 legalized four per cent (4%) beer. A third election on January 1, 1940 submitted to the people of the county the question of legalizing all liquors, but the proposition was defeated. If such be the true situation, you are advised that in our opinion for prosecutions against offenders engaged in the sale, etc., of all types of intoxicants except beer, you should allege and prove the election of January 1, 1938, and need not make allusion to the subsequent elections. Such elections were not positive in effect; they did not change the status of anything, except that the 1939 election made the sale, etc. of beer containing not more than four per centum (4%) of alcohol legal

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within the county. It is our opinion that the legal status of four per centum (4%) beer was not altered by the 1940 election; failure to legalize all liquors did not positively prohibit the sale, etc. of the beer, which had been legalized by the 1939 election.

Your third question, as stated, is answered in the affirmative. We repeat the statement made in our answer to your first question, that the allegations and proof should show the most recent election in which the traffic in alcoholic beverages had been positively prohibited. To carry our hypothetical proposition further, suppose that in addition to the three elections mentioned in the preceding paragraph hereof, a fourth election was held, in which the voters prohibited the sale, etc. of beer. Upon a prosecution for the illegal sale of beer, the complaint and information should allege the last election; all other types of violators should be charged under the 1938 election.

Trusting that the above satisfactorily answers your inquiries, we are

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By /s/

Benjamin Woodall  
Assistant

BW:JCP:DDT

APPROVED JAN 11, 1945  
/s/ Carlos C. Ashley  
First Assistant  
Attorney General

APPROVED OPINION COMMITTEE

By B. W. B. Chairman